

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 05-0143****Sales and Use Tax
For Tax Years 2005**

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ISSUE**I. Sales and Use—Aircraft Purchase**

Authority: 45 IAC 2.2-5-15

Taxpayer protests the denial of a claim for exemption.

STATEMENT OF FACTS

Taxpayer purchased an aircraft but did not pay sales tax on the purchase, claiming an exemption for rental or lease to others. Taxpayer also claimed a trade-in allowance on the purchase of the aircraft. The Indiana Department of Revenue ("Department") reviewed the claim for exemption and the claim for trade-in allowance and determined that taxpayer did not qualify for the exemption. The Department denied the claim for exemption and issued a proposed assessment for sales tax on the purchase of the aircraft. Taxpayer protests the imposition of proposed assessments. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase**DISCUSSION**

Taxpayer protests the imposition of sales tax on its purchase of an aircraft. Taxpayer is a partnership which signed a lease agreement with another partnership. The partners of both partnerships are identical. Taxpayer purchased the aircraft in 2005 for five hundred, forty thousand dollars (\$540,000.00) with a trade-in allowance of twenty-five thousand dollars (\$25,000.00) for a final purchase price of five hundred, fifteen thousand dollars (\$515,000.00). The Department denied taxpayer's claim for a rental exemption and disallowed the trade-in value on the purchase of the subject aircraft.

Taxpayer protests that it qualifies for the rental exemption found in 45 IAC 2.2-5-15, which states:

- (a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it was sold to such purchaser.
- (b) General rule. Sales of tangible personal property for resale, rental or leasing are exempt from tax if all of the following conditions are satisfied:
 - (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
 - (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
 - (3) The property is resold, rented or leased in the same form in which it was purchased.
- (c) Application of general rule.
 - (1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.
 - (2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.
 - (3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was always its intention to acquire and lease the aircraft to the other partnership and that the purchase of aircraft should be exempt. Taxpayer states that sales tax, if any, would be on the lease stream and not on the purchase price.

Taxpayer has not provided any documentation to establish that there is, in fact, a lease stream. Taxpayer has not provided any documentation to establish that it received any payments from its "lessee". Taxpayer has not provided any documentation to establish that it is in the business of leasing an aircraft. 45 IAC 2.2-5-15 clearly states that to qualify for the exemption, a taxpayer must be occupationally engaged in the business of reselling, renting or leasing such property in the regular course of its business. Taxpayer is not occupationally engaged in the reselling, renting or leasing of the subject aircraft and does not qualify for the claimed exemption.

FINDING

Taxpayer's protest is denied.